

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MISTY R. MAJORS)	
Claimant)	
VS.)	
)	
SONIC DRIVE-IN)	Docket No. 239,644
Respondent)	
AND)	
)	
HARTFORD ACCIDENT & INDEMNITY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the February 7, 2001 Award entered by Administrative Law Judge Nelsonna Potts Barnes. The Board heard oral argument on July 13, 2001, in Wichita, Kansas.

APPEARANCES

James B. Zongker of Wichita, Kansas, appeared for claimant. Gary K. Albin of Wichita, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for an October 5, 1998 accident and injuries to the right lower extremity.

In the February 7, 2001 Award, Judge Barnes found that claimant's accidental injury occurred when she slipped and fell on a wet floor. The Judge awarded claimant benefits for a 20 percent permanent partial disability to the right lower extremity.

Respondent and its insurance carrier contend Judge Barnes erred. They argue claimant was injured during horseplay and, therefore, claimant's accident did not arise out of and in the course of her employment. Therefore, they request the Board to reverse the Award and deny claimant's request for benefits.

Conversely, claimant contends the Award should be affirmed. Claimant denies that she was engaged in horseplay at the time of the accident. Instead, claimant contends that she was walking and looking at a computer screen to fill drink orders and that she slipped and fell because the floor was wet and slick.

The only issue before the Board on this appeal is whether claimant's accident arose out of and in the course of employment with respondent or whether the accident occurred as the result of horseplay.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

The Award should be affirmed. The Board agrees with the Judge that the greater weight of the credible evidence establishes that claimant was performing her job duties at the time of the accident and that she slipped and fell as a result of the wet floor. Claimant's testimony that she slipped in water and fell on the slippery wet floor is consistent with the medical records introduced into evidence and is also corroborated by former coworker Michael McGwire, who testified that the floor was wet.

The day following the accident, October 6, 1998, claimant sought treatment at Advanced Orthopaedic Associates and provided that clinic with a history that she slipped on water at work. The history from that clinic reads:

Misty Majors [claimant] is a 19 year old female, employed at Sonic, who is referred by Wesley Emergency Room and Work Comp for evaluation of right ankle fracture. Date of injury was October 5, 1998. She was at work, slipped on water on the floor. Another employee tried to stop her fall and her foot hit a bar and she heard a couple of pops. . . .

Additionally, the history contained in the October 7, 1998 operative report from Kansas Surgery and Recovery Center also indicates that claimant slipped on water at work and fractured her ankle. That report reads, in part:

The patient is a 19-year-old who slipped on water while working at Sonic sustaining a bi-malleolar ankle fracture . . .

After weighing the testimonies from the various witnesses, the Board finds that claimant's accident occurred when she slipped and fell on a wet floor while she was

walking and reading a computer screen to prepare a drink order. The Board concludes that claimant's accident did not occur as the result of horseplay but, instead, arose out of and in the course of employment.

The Board adopts the findings and conclusions set forth in the Award that are not inconsistent with the above.

AWARD

WHEREFORE, the Board affirms the February 7, 2001 Award entered by Judge Barnes.

IT IS SO ORDERED.

Dated this ____ day of July 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James B. Zongker, Wichita, KS
Gary K. Albin, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director